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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,213	04/13/2004	Paul Portmann	36641	4650
<div>116                      7590                      12/28/2007</div> <div>PEARNE &amp; GORDON LLP</div> <div>1801 EAST 9TH STREET</div> <div>SUITE 1200</div> <div>CLEVELAND, OH 44114-3108</div>				
			<div>EXAMINER</div> <div>LE, HUYEN D</div>	
			<div>ART UNIT</div> <div>2615</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE</div> <div>12/28/2007</div>	<div>DELIVERY MODE</div> <div>PAPER</div>

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/823,213

Applicant(s)

PORTMANN, PAUL

Examiner

HUYEN D. LE

Art Unit

2615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 7, 9-11, 14-15, 17-19, 23, 25-27, 31 and 33 are rejected under 35

U.S.C. 102(b) as being anticipated by Fackler (U.S. patent 5,463,692).

Regarding claims 1-2, 14-15, 18, 31 and 33, Fackler teaches a control element with a mechanical actuator (14, 16, 50, 120, 125, 68A-68F, figures 1, 2, 3, 4 and 5), and an electrical or electromechanical switching element (42, 54, 56, 90, 92A-92F, 94, 98A-98F, 100). As shown in the drawings, the switching element comprises of at least one push button (42, 54, 56, 90, 92A, 94) reacting upon pressure, and the actuator (14, 125, 68A-68F) is arranged elastically or resiliently relocatable or tiltable with respect to the switching element. Fackler further teaches an actuating cam (68A-68F) that is provided at the actuator facing the button. The actuator (50, 120, 125, 68A-68F) and the switching element (42, 54, 56, 90, 92A-92F, 94) are separately mounted parts since the actuator (120, 125, 68A-68F) is mounted on the rotor layer (62) and the switching element (66A, 90, 92A-92F, 94) is constructed in the stator layer (60, figure 4).

Regarding claims 3 and 19, Fackler teaches the push button (42, 54, 56, 90, 92A, 94, 98A, 100) comprises a rubber mat with contact elements (figures 2 and 4 and see col. 3, lines 15-27).

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Regarding claims 7 and 23, Fackler shows the actuator (120, 122, 124, 125, 68A-68F) that has a concave recess as claimed (figure 4).

Regarding claims 9 and 25, as broadly claimed, Fackler shows the actuator (120, 125, 68A-68F) that has a first contact surface (the surface at the cam 68A-68F) arranged substantially parallel to the push button (figure 4) and a second contact surface arranged substantially perpendicular with the push button and having a round shape at the corners of the handle (125, figures 4, 5).

Regarding claims 10 and 26, as broadly claimed, Fackler shows the actuator (120, 125, 68A-68F) that has a first contact surface (the surfaces at the cover 120 and the cam 68A-68F) comprising of a concave cavity (figure 4) and a second contact surface (the handle 125) having at least partially a cylindrical shape (figures 4, 5).

Regarding claims 11 and 27, as shown in figures 3-5, the actuator has a tilting axis that is formed by a pin arranged above the push button and the actuator is detachably attached to the tilting axis as claimed.

Regarding claim 17, Fackler teaches a support (72, 74) for the actuator as claimed.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 4-6, 8, 12-13, 16, 20-22, 24, 28-30 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fackler (U.S. patent 5,463,692).

Regarding claims 4-5, 16, 20-21, 30 and 32, Fackler shows the actuator that is mounted to a housing (12). Fackler does not teach the switching element (42, 54, 56, 90, 92A-92F, 94, 98A-98F, 100) that is arranged or soldering connected to a printed circuit board as claimed in claims 4-5. However, Fackler does teach that the switching element is associated with circuitry units or circuitry within the hearing aid (figures 3, 4, 6 and see col. 3, lines 46-65).

Therefore, it would have been obvious to one skilled in the art to provide the switching elements of Fackler that is arranged or soldering connected to the circuits or conducting paths of a printed circuit board for providing better electrical connections within the hearing aid.

Regarding claims 6 and 22, as shown in figures 3-5, Fackler teaches the actuator with an open resilient profile for a snapping connection with support elements (72, 74, also see figure 4 and col. 4, lines 33-36).

Fackler does not specifically teach the actuator that is consisted of plastics. However, it is known in the art to provide the housing components in the hearing aid to be made of plastics.

Therefore, it would have been obvious to one skilled in the art to provide the actuator (14, 16, 50, 120, 125, 68A-68F) of Fackler that is consisted of plastics of an alternate choice.

Regarding claims 8 and 24, Fackler shows the actuator that has a tongue (the handle 125) protruding outside, and lacks the teaching of a concave or convex recessed grip. However, Fackler does not restrict to any specific construction for the handle (125).

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Therefore, it would have been obvious to one skilled in the art to provide any construction for the handle (125) such as a concave or convex recessed grip for better operating and gripping the actuator.

Regarding claims 12-13 and 28-29, Fackler does not specifically teach a flexible cover made of rubber for the actuator. However, providing a cover made of rubber or resilient material for a handle is known in the art.

Therefore, it would have been obvious to one skilled in the art to provide a cover for the handle (125) of the actuator to be made of rubber or resilient material for better protecting, operating and gripping the actuator.

### ***Response to Arguments***

5. Applicant's arguments filed 10/15/07 have been fully considered but they are not persuasive.

Responding to the arguments about the actuator and the switching element in the Fackler reference, the examiner has explained in detail in the office action. As shown in figure 4, Fackler shows the actuator (120, 125, 68A-68F) and the switching element (66A, 90, 92A-92F, 94) are separately mounted parts since they are constructed in different layers. The actuator (120, 125, 68A-68F) is mounted on the rotor layer (62) and the switching element (66A, 90, 92A-92F, 94) is constructed in the stator layer (60).

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUYEN D. LE whose telephone number is (571) 272-7502. The examiner can normally be reached on 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SINH TRAN can be reached on (571) 272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



HL  
December 26, 2007



HUYEN LE  
PRIMARY EXAMINER